

REMARKS

Claims 1-27 are pending in this application. Claims 1-24 have been rejected, claims 25-28 are added herein.

Reconsideration and withdrawal of the rejections set forth in the Office Action dated June 11, 2009 are respectfully requested. The applicant petitions the Commissioner for a three-month extension of time: a separate petition accompanies this amendment.

Amendments

Amendments to claims have been made to independent claims 1, 9, and 16. Support for these amendments can be found in the application as filed, including at paragraphs [0095] – [0099]. Accordingly, no new matter has been added by these amendments.

Rejections under 35 U.S.C. §103

Claims 1, 4-9, 12-16, 19-23 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over USP 5,703,875, Burnett et al. in view of USP 6,498,568, Austin.

Claims 2-3, 10-11 and 17-18 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over U.S. Patent No. 5,703,875, Burnett et al. and U.S. Patent No. 6,498,568, Austin, as applied to claims 1, 9 and 16 as previously discussed, and further in view of USP 4,924,463, Thomas.

Applicant notes the long and protracted period of pendency of this application from the filing date of 11/07/2001 (more than 9 years). Applicant further notes the Reversal of the Examiner's Final Rejection in the Decision decided 02/25/2009.

Applicant further references the issues, findings of fact, and analysis set forth in that Decision.

Without admitting the propriety of the 35 USC 103 rejections set forth in the new non-final office action, applicant has for business reasons unrelated to patentability amended each of independent claims 1, 9, and 16 to further characterize the features of the synchronization and synchronization symbols in accordance with a particular disclosed embodiment. Applicant reserves the right to present the original claims, or a differently amended version of the original claims, in a related application.

Independent claim 1 now includes the further limitation that “the synchronization symbol permitting an external receiving node to properly align with a synchronization primitive to be correctly aligned on a symbol boundary”. Amended independent claim 9, now includes the further limitation that “the synchronization symbol permitting proper alignment upon receiving with a synchronization primitive to be correctly aligned on a symbol boundary”. Independent claim 16, now includes the further limitation that “... the transmitted synchronization symbol ... permitting an external receiving node to properly align with a synchronization primitive to be correctly aligned on a symbol boundary, ...”.

With reference to each of these claims (and the claims dependent there from), Applicant submits that Burnett fails to disclose the underlying features as argued earlier by applicant and that Austin does not make up for these deficiencies.

Applicant submits that at most (See Austin at Col. 4, lines 37-45) discloses “5 pre-defined packet sizes” and “16 user defined data message types”. Austin also states that “[t]he system uses standard run in and byte synchronization techniques” and that “[t]he byte synchronization word used is 32 _bits long and there are 5_different words used, one to identify each of the different packet types.”

Applicant submits that neither Burnett nor Austin teaches, discloses, suggests, or provides any motivation for the combination of elements recited in the independent claims including the added limitations that “the synchronization symbol permitting an external receiving node to properly align with a synchronization primitive to be correctly aligned on a symbol boundary” (Claim 1), “the synchronization symbol permitting properly alignment upon receiving with a synchronization primitive to be correctly aligned on a symbol boundary” (Claim 9), or “... the transmitted synchronization symbol ... permitting an external receiving node to properly align with a synchronization primitive to be correctly aligned on a symbol boundary” (Claim 16).

Applicant further submits that there is confusion or ambiguity in the disclosure of Austin between message types, packet sizes, packet types, and that these ambiguities and confusion would tend to teach away from rather than toward Applicant's claims even if there was the purported teaching or suggestion.

Finally, the examiner suggests, based on his interpretation of Austin and Burnett, that it would have been obvious to apply a synchronization word for identifying a packet type as disclosed by Austin into the teaching of Burnett which discloses a control word for identifying the packet type, where the suggested motivation would have been to reduce overhead to maintain a throughput after modifying the system.

Applicant again must respectfully disagree and submits that it would not be obvious to combine Burnett and Austin. Burnett has been differentiated in Applicant's earlier responses and Appeal Brief.

Austin is directed toward a pipeline communication system, that uses the pipeline and the adjacent ground and includes branches with junctions. Governor modules and transformers/rectifiers form part of the network. Monitors periodically provide information to the network controller. The system control receives information by way of an outstation to provide two-way communication and control using the pipeline and

adjacent ground as conductors. Typically, the information in the form of fast frequency shift keying modulation is superimposed on the cathodic pipe protection system. (See Austin Abstract).

Austin also describes in minimal detail, a protocol used for "data operation over a remote monitoring network between the monitor and the system control". Austin further states that "This system uses up to 5 pre-defined data packet sizes and up to 16 user defined data message types within each packet. Each packet has Forward Error Connection (FEC) and bit interleaving applied to it on transmission. Error checking is performed using a standard CRC. The system uses standard run in and byte synchronization techniques. The byte synchronization word used is 32 _bits long and there are 5_different words used, one to identify each of the different packet types." Austin further states that "[t]he number of packets and user defined messages has been chosen to suit the present Gas Market."

Austin does not disclose, suggest, or motivate any need for the particular synchronization now set forth in each independent claim. Even if Burnett and Austin were combined, the combination of Burnett and Austin would not result in the structure or method of Applicant's amended claims. The required synchronization as recited in Applicant's claims is not present in the combination.

For at least these reasons, Applicant submits that each of the now pending independent Claims 1, 9, and 16 are patentable over the cited art. Furthermore, each of the claims dependent from these independent claims (Claims 2-8, 10-15, and 17-24, as well as newly added dependent claims 25-28) are patentable over the cited art for at least the same reasons as the underlying independent claims and further because each adds additional distinguishing limitations.

Applicant submits that each of the added dependent claims 25-28 add further features respective of the particular synchronization that are supported by the

application as filed and not disclosed, suggested, or motivated by Burnett, Austin, or a combination of these references.

Conclusion

In view of the foregoing, the applicant submits that the claims pending in the application comply with the requirements of 35 U.S.C. §112 and patentably define over the prior art. A Notice of Allowance is therefore respectfully requested.

If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-2207, under Order No. 59472-8818.US00 from which the undersigned is authorized to draw.

Dated: December 11, 2009

Respectfully submitted,

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